

of security-guard functions at the installation or facility that exceeds such lesser scope of requirements or extent of performance.

[68 FR 7443, Feb. 14, 2003]

**237.102-70 Prohibition on contracting for firefighting or security-guard functions.**

(a) Under 10 U.S.C. 2465, the DoD is prohibited for entering into contracts for the performance of firefighting or security-guard functions at any military installation or facility unless—

(1) The contract is to be carried out at a location outside the United States and its outlying areas at which members of the armed forces would have to be used for the performance of firefighting or security-guard functions at the expense of unit readiness;

(2) The contract will be carried out on a Government-owned but privately operated installation;

(3) The contract (or renewal of a contract) is for the performance of a function under contract on September 24, 1983; or

(4) The contract—

(i) Is for the performance of firefighting functions;

(ii) Is for a period of 1 year or less; and

(iii) Covers only the performance of firefighting functions that, in the absence of the contract, would have to be performed by members of the armed forces who are not readily available to perform such functions by reason of a deployment.

(b) Under Section 2907 of Public Law 103-160, this prohibition does not apply to services at installations being closed (see subpart 237.74).

(c) Under Section 1010 of Public Law 107-56, this prohibition does not apply to any contract that

(1) Is entered into during the period of time that United States armed forces are engaged in Operation Enduring Freedom or during the period 180 days thereafter;

(2) Is for the performance of security functions at any military installation or facility in the United States;

(3) Is awarded to a proximately located local or State government, or a combination of such governments, whether or not any such government is

obligated to provide such services to the general public without compensation; and

(4) Prescribes standards for the training and other qualifications of local government law enforcement personnel who perform security functions under the contract in accordance with criteria established by the Secretary of the department concerned.

(d) Under section 332 of Pub. L. 107-314, this prohibition does not apply to any contract that is entered into for any increased performance of security-guard functions at a military installation or facility undertaken in response to the terrorist attacks on the United States on September 11, 2001, if—

(1) Without the contract, members of the Armed Forces are or would be used to perform the increased security-guard functions;

(2) The agency has determined that—

(i) Recruiting and training standards for the personnel who are to perform the security-guard functions are comparable to the recruiting and training standards for DoD personnel who perform the same security-guard functions;

(ii) Contractor personnel performing such functions will be effectively supervised, reviewed, and evaluated; and

(iii) Performance of such functions will not result in a reduction in the security of the installation or facility; and

(3) Contract performance will not extend beyond December 1, 2005. Section 324 of Public Law 108-375 permits an extension of the period for contract performance through September 30, 2006, if DoD submits a report and plan to Congress on the use of this authority. See PGI 237.102-70(d)(3) for information on the reporting requirement.

[60 FR 61599, Nov. 30, 1995, as amended at 67 FR 11439, Mar. 14, 2002; 68 FR 7443, Feb. 14, 2003; 69 FR 35533, June 25, 2004; 70 FR 14577, Mar. 23, 2005; 70 FR 35545, June 21, 2005]

**237.104 Personal services contracts.**

(b)(i) Authorization to acquire the personal services of experts and consultants is included in 10 U.S.C. 129b. Personal service contracts for expert and consultant services must also be authorized by a determination and